

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 02 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SERGIO MARTINEZ-SERVIN,

Defendant - Appellant.

No. 04-30550

D.C. No. CR-03-00156-
BLG(RFC)

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Submitted October 18, 2005^{**}
Seattle, Washington

Before: CUDAHY,^{***} T.G. NELSON, and McKEOWN, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable Richard D. Cudahy, Senior United States Circuit Judge for the Seventh Circuit, sitting by designation.

Sergio Martinez-Servin appeals his sentence on two grounds. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The Government provided a record to the district court that was insufficient to support the § 2L1.2(b)(1)(A) enhancement.¹ However, because Martinez-Servin did not object to the district court's imposition of the enhancement before that court, he must show not only that plain error occurred but that it affected his substantial rights.² He has not satisfied that burden. Accordingly, the panel affirms as to the first issue.

The transcript makes it clear that the district court considered all the relevant sentencing factors mandated by 18 U.S.C. § 3553, not merely the sentencing guidelines. Accordingly, the panel affirms as to the second issue as well.

AFFIRMED.

¹ See *United States v. Nobriga*, 408 F.3d 1178, 1182 n.4 (9th Cir. 2005) (explaining that judicially noticeable facts, which do not include a defendant's admissions before the sentencing court, must support a district court's enhancement of a defendant's sentence for a predicate offense); *United States v. Pimentel-Flores*, 339 F.3d 959, 968 (9th Cir. 2003) (explaining that the district court's reliance solely on the factual description of the predicate offense in the presentence report was plain error).

² *Pimentel-Flores*, 339 F.3d at 967.